

Decision 03-04-024 April 3, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of ITC^DeltaCom
Communications, Inc., (U-5760-C) and
ITC^DeltaCom, Inc., Parent Corporation for
Approval of Indirect Transfer of Control.

Application 02-08-013
(Filed August 13, 2002)

O P I N I O N

Summary

This decision grants the joint application ITC^DeltaCom Communications, Inc., (DeltaCom) and ITC^DeltaCom, Inc. for approval of the indirect transfer of control of DeltaCom.

Parties to the Transaction

DeltaCom is an Alabama corporation authorized to do business in California. Its principal place of business is located at 4092 S. Memorial Parkway, Huntsville, Alabama 35802. By Decision (D.) 97-05-026, it was granted a certificate of public convenience and necessity (CPCN) to resell interexchange services. It provides service to approximately 280 customers in California. DeltaCom provides interexchange services in all 50 states, and local exchange service in eight states. It is also authorized to provide interstate and international services.

ITC^DeltaCom, Inc. (Old ITC) is a Delaware corporation. Its principal place of business is located at 1791 O.G. Skinner Drive, West Point, Georgia 31833. It wholly owns Interstate FiberNet, Inc. (FiberNet), and FiberNet wholly owns DeltaCom.

ITC^DeltaCom, Inc. (New ITC) is the same corporate entity as Old ITC. However, it will have a revised ownership structure as a result of the proposed transaction.

Proposed Transaction

On June 25, 2002, Old ITC filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court (Bankruptcy Court) for the District of Delaware. Old ITC, as the Debtor-in-Possession, and New ITC request approval of the indirect transfer of control of DeltaCom from Old ITC to New ITC. Such approval will permit consummation of a plan of reorganization (POR) being considered by the Bankruptcy Court. The POR will allow Old ITC to emerge from bankruptcy as New ITC, with a revised ownership structure, and improved capitalization.

The POR provides for cancellation of Old ITC's common and preferred stock. Holders of senior and subordinated convertible notes of Old ITC will receive 86.5% of New ITC's common stock. Holders of Old ITC's common stock, and Series A and B preferred stock will receive a total of 1% of New ITC's common stock. Two stockholders of old ITC (Buyers) have agreed to purchase up to \$15 million of Series A convertible preferred stock of New ITC.¹ They will also receive 2 % of New ITC's common stock, and warrants to purchase additional common stock. Other existing preferred and common stockholders of Old ITC will be entitled to purchase, up to a specified amount, the convertible

¹ The Series A preferred stock, if converted, represent 10.5% of new ITC's common stock.

preferred stock and warrants that Buyers have agreed to purchase.² As a result of the proposed transfer, no single shareholder will have a controlling interest in New ITC, and the existing senior management team of Old ITC will remain in place in New ITC.

New ITC is estimated to have total corporate indebtedness of \$194 million as opposed to Old ITC's corporate indebtedness of \$724 million under its senior credit facility and capital leases. Annual interest expense for 2002 on a pro forma basis will to be reduced from \$55 million to between \$11 million and \$13 million.

The applicants represent that the proposed transaction will be transparent to customers. New ITC will wholly own FiberNet, and FiberNet will continue to wholly own DeltaCom. There will be no change in the name or management of DeltaCom. Customers will continue to receive service under the same rates, terms, and conditions after the proposed transaction is approved.

Discussion

Pub. Util. Code § 854 requires Commission authorization before a company may "merge, acquire, or control . . . any public utility organized and doing business in this state" The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

² All of the ownership percentages shown herein assume conversion of Series A preferred stock to common stock. If the Series A preferred stock is not converted, the New ITC common stock would be distributed as follows: holders of senior and subordinated convertible notes of Old ITC 96.7%, holders of Old ITC's common stock, and Series A and B preferred stock 1.1%, and Buyers 2.2%.

The proposed transaction results in a revised ownership structure, and an improved capitalization of DeltaCom's ultimate corporate parent, with no single stockholder owning a controlling interest. Improved capitalization of DeltaCom's ultimate corporate parent will strengthen DeltaCom's financial position. Since there will be no change in DeltaCom's management, DeltaCom's technical expertise will not be adversely affected. The proposed transaction will be transparent to DeltaCom's customers, and will allow DeltaCom to continue to provide uninterrupted service. Therefore, the proposed transaction is in the public interest, and will be approved.

Categorization and Need for Hearings

In Resolution ALJ 176-3093, dated August 22, 2002, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Therefore, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations.

Comments on Draft Decision

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Carl Wood is the Assigned Commissioner and Jeffrey O'Donnell is the assigned Administrative Law Judge.

Findings of Fact

1. By D.97-05-026, DeltaCom was granted a CPCN to resell interexchange services.

2. On June 25, 2002, Old ITC filed for bankruptcy.
3. Approval of the proposed transaction will permit consummation the POR being considered by the Bankruptcy Court.
4. The POR will allow Old ITC to emerge from bankruptcy as New ITC, with a revised ownership structure, and improved capitalization.
5. No single shareholder will have a controlling interest in New ITC, and the existing senior management team of Old ITC will remain in place in New ITC.
6. New ITC will wholly own FiberNet, and FiberNet will continue to wholly own DeltaCom.
7. There will be no change in the name or management of DeltaCom as a result of the proposed transaction.
8. Customers will continue to receive service under the same rates, terms, and conditions after the proposed transaction.
9. Improved capitalization of DeltaCom's ultimate corporate parent will strengthen DeltaCom's financial position.
10. DeltaCom's technical expertise will not be adversely affected.
11. Notice of this application appeared on the Commission's Daily Calendar on August 16, 2002.
12. There were no protests to this application.
13. No hearings are necessary.

Conclusions of Law

1. The proposed transaction is in the public interest.
2. The proposed transaction should be approved.
3. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Section 854, the joint application ITC^DeltaCom Communications, Inc., (DeltaCom) and ITC^DeltaCom, Inc. for approval of the indirect transfer of control of DeltaCom is approved.
2. This application is closed.

This order is effective today.

Dated April 3, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners